

JUL 6 1993

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

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In the Matter of:)	Docket No. 7948
)	
PLATINUM ASSOCIATES, INC.;)	ORDER ON REQUEST
PAI; ROBERT L. DARNALL CO.;)	FOR REHEARING AND
RLD CO., INC.; THAYER C.)	MOTION TO SET ASIDE
LINDAUER; JAMES A. O'LEARY,)	DEFAULT
)	
Respondents.)	
_____)	

On June 11, 1993, counsel for Respondents Platinum Associates, Inc., PAI, Robert L. Darnall Co. and RLD Co., Inc. filed a request that the Order on Default against Respondents Platinum Associates, Inc. and PAI entered on May 7, 1993 be set aside and a request that Respondents Platinum Associates, Inc., PAI, Robert L. Darnall Co. and RLD Co., Inc. be allowed to file an answer to the allegations in the notice of hearing. On June 24, 1993, counsel for the Arizona Department of Insurance ("ADOI") filed a response opposing Respondents' requests.

Because of the rather unique procedural history of this matter, we will provide a brief chronological background of this matter.

1. On December 15, 1992, the Director issued a Cease and Desist Order against Platinum Associates, Inc. ("Platinum"), PAI, Robert L. Darnall Co., RLD Co., Inc., Thayer C. Lindauer, James A. O'Leary.

2. On February 19, 1993, the Director issued an order acknowledging receipt of a request purportedly from Platinum requesting an open extension to plead until resolution of a pending matter in California. The Director considered

1 Platinum's request to be a request for hearing and a notice of
2 hearing was subsequently issued.

3 3. No demand for hearing was ever filed by or on
4 behalf of Robert L. Darnall Co., RLD Co., Inc. or James A.
5 O'Leary. A separate demand was filed by Thayer C. Lindauer, and
6 a separate hearing has been scheduled pursuant to that demand.

7 4. For purposes of this proceeding, the only
8 Respondents that are parties challenging the Cease and Desist
9 Order are Platinum and PAI.

10 5. On April 8, 1993, counsel for ADOI filed a request
11 for default on the ground that Platinum and PAI had failed to
12 file an answer as required by the notice of hearing issued on
13 February 25, 1993.

14 6. On April 22, 1993, the undersigned hearing officer
15 issued an order directing Platinum and PAI to file an answer on
16 or before May 5, 1993.

17 7. On May 7, 1993, the Director issued an order
18 finding that Platinum and PAI failed to file an answer and were
19 in default.

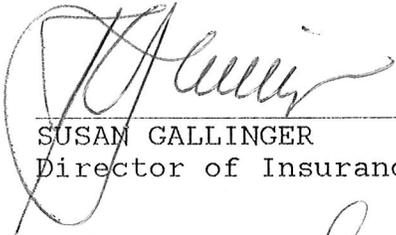
20 Respondents have been afforded every opportunity to
21 appear and defend themselves in this matter. We find that the
22 order on default is an "order on hearing" within the meaning of
23 A.A.C. R4-14-114. Pursuant to R4-14-114, within 30 days after
24 service of the Director's order, any aggrieved party may request
25 a rehearing or review of the order. Pursuant to A.A.C.
26 R4-14-113(B), the Director or hearing officer may, for good
27 cause, extend the time limits prescribed by rule "except those
28 time limits imposed by R4-14-114" (emphasis added).

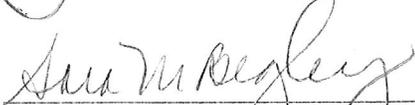
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Since we cannot extend the time for filing a request for review or rehearing, Respondents' request is untimely. In addition, Respondents cannot request rehearing or reconsideration based upon some perceived irregularity that they created. Mr. Katz was Respondents' counsel, and if in fact he failed to communicate with Respondents regarding the due date for the answer, Respondent cannot claim that this failure of their own counsel created an irregularity in the proceedings or undue accident or surprise.

For the foregoing reasons, the Request for Rehearing and Motion to Set Aside Default are denied and the Order of Default issued on May 7, 1993 is affirmed.

DATED this 6th day of July, 1993.


SUSAN GALLINGER
Director of Insurance


SARA M. BEGLEY
Chief Hearing Officer

COPY of the foregoing mailed/delivered this 6th day of July, 1993, to:

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